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11	HYPER ICE, INC. and			
12	HYPER ICE, INC. and HYPERICE IP SUBCO, LLC			
13	INITED OF A TEG DISTRICT COLUMN			
14	UNITED STATES DISTRICT COURT			
	CENTRAL DISTRICT OF CALI	FORNIA, SOUTHERN DIVISION		
15				
16	HYPER ICE, INC., a California	CASE NO.		
17	corporation, and HYPERICE IP	CASE NO.		
	SUBCO, LLC, a Delaware limited	COMPLAINT FOR PATENT		
18	liability company,	INFRINGEMENT		
19	3 1 3/			
20	Plaintiffs,	DEMAND FOR JURY TRIAL		
21	VS.	Trial Date: None Set		
22				
23	MUSCLEGUN LLC, a California			
	limited liability company,			
24	Defendant.			
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COMPLAINT FOR PATENT INFRINGEMENT

4848-2190-1040.2

1. Plaintiff Hyper Ice, Inc. ("Plaintiff" or "Hyperice") alleges as follows for this Complaint for Patent Infringement ("Complaint") against defendant MuscleGun LLC ("Defendant" or "MuscleGun"):

THE PARTIES

- 2. Hyperice is a California corporation with its principal place of business at 525 Technology Drive, Suite 100, Irvine, California 92618.
- 3. Hyperice is informed and believes, and based thereon alleges, that MuscleGun is a California limited liability company with a principal place of business at 929 Colorado Avenue, Santa Monica, CA 90401.
- 4. On information and belief, either itself or through its subsidiaries, parents, or other related companies, Defendant sells infringing products via Amazon.com and via its website, muscleguns.com, to consumers in this District, throughout the State of California, and throughout the United States.

JURISDICTION AND VENUE

- 5. This is an action for patent infringement under 35 U.S.C. §§ 271 *et seq*. brought by Hyperice against Defendant for Defendant's infringement of U.S. Patent No. 11,857,482 ("the '482 Patent").
- 6. This Court has subject matter jurisdiction over Hyperice's claims asserted herein pursuant to 28 U.S.C. §§ 1331 and 1338(a) because those claims arise under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq*.
- 7. This Court has personal jurisdiction over Defendant by virtue of, *inter alia*, Defendant's conduct of business in this District; its purposeful availment of the rights and benefits of California law; and its substantial, continuous, and systematic contacts with the State of California and this District. On information and belief, Defendant: (1) intentionally markets and sells its infringing products to residents of this State; (2) enjoys substantial income from this State; and (3) is incorporated in this State.
 - 8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and 28

District and has a regular and established place of business in this District, and because Defendant is incorporated in this State and has a regular and established

- The '482 Patent is entitled "Massage Device Having Variable Stroke Length" and issued on January 2, 2024, claiming priority to Application No. 14/317,573, filed on June 27, 2014, and Provisional Application No. 61/841,693, filed on July 1, 2013. A true and correct copy of the '482 Patent is attached hereto as
- Philip C. Danby and John Charles Danby are the named inventors of the inventions disclosed in the '482 Patent. Hyperice IP Subco, LLC, a wholly owned subsidiary of Hyper Ice, Inc., is the owner of the '482 Patent. Hyper Ice, Inc. is a licensee that has been granted the express, irrevocable right to, inter alia,
- This action arises out of Defendant's direct infringement of the '482 11. Patent.
- 12. Since at least 2018, Hyperice has developed, arranged for the manufacture of, offered for sale, and sold the Hypervolt line of battery-powered percussive massage devices, including the Hypervolt Go 2, Hypervolt 2, and Hypervolt 2 Pro, all of which are covered by one or more claims of the '482 Patent.
- Defendant offers for sale and/or sells products that infringe the '482 13. Patent, including but not limited to all massage guns sold on muscleguns.com, including but not limited to the Carbon and Go models.

COUNT 1 – PATENT INFRINGEMENT

Hyperice incorporates by reference the allegations in Paragraphs 1-13 14. above.

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costs.

- 15. Defendant has infringed and continues to infringe the '482 Patent under the Patent Laws of the United States, 35 U.S.C §§ 271 *et seq*. Defendant offers for sale and/or sells the infringing products at issue in this case.
- 16. Defendant infringes at least Claim 1 of the '482 Patent. Defendant offers for sale and/or sells infringing products, which are battery-powered percussive massagers that include the following claim limitations, either literally or under the doctrine of equivalents:
 - a. a housing;
- b. a piston having a proximal end and a distal end, the distal end of the piston having a substantially cylindrical bore;
- c. a motor at least partially within the housing and operatively connected to the proximal end of the piston, wherein the motor is configured to cause the piston to reciprocate at a first speed;
- d. a drive mechanism that controls a predetermined stroke length of the piston; and
- e. a quick-connect system comprising the distal end of the piston and a first massaging head, wherein the quick-connect system is configured to secure the first massaging head to the percussive massager by a proximal end of the massaging head being slid into the bore while the piston reciprocates the predetermined stroke length at the first speed.
- 17. Defendant's infringement of the '482 Patent has caused, and will continue to cause, significant damage to Hyperice. As a result, Hyperice is entitled to an award of damages adequate to compensate it for the infringement in an amount that is in no event less than a reasonable royalty pursuant to 35 U.S.C. §284. Hyperice is also entitled to recover prejudgment interest, post-judgment interest, and
- 18. As a result of Defendant's infringement of the '482 Patent, Hyperice has suffered irreparable harm and impairment of the value of its patent rights, and

1	Hyperice will continue to suffer irreparable harm and impairment of the value of its	
2	patent rights, unless and until Defendant is permanently enjoined by this Court from	
3	infringing the '482 Patent under 35 U.S.C. §283. Hyperice has no adequate remedy	
4	at law and is entitled to a permanent injunction against Defendant.	
5	<u>PRAYER FOR RELIEF</u>	
6	WHEREFORE, Hyperice prays for the following relief:	
7	1.	That this Court enter judgment of infringement of the '482 Patent in
8	favor of Hyperice and against Defendant;	
9	2.	That this Court enter a permanent injunction against Defendant from
10	infringing the '482 Patent;	
11	3.	That this Court award Hyperice compensatory damages for
12	infringement of the '482 Patent, as well as interest thereon;	
13	4.	That this Court award Hyperice its costs of suit;
14	5.	That this Court declare this an exceptional case under 35 U.S.C. §285
15	and award Hyperice its attorneys' fees and any other costs incurred in connection	
16	with this action;	
17	6.	That this Court award Hyperice prejudgment and post-judgment
18	interest; and	
19	7.	That this Court grant such further relief as the Court deems just and
20	proper.	
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DATED: January 16, 2024 MILLER BARONDESS LLP 1 2 By: /s/ Ben Herbert BEN HERBERT, CA#277356 3 bherbert@millerbarondess.com 4 2121 Avenue of the Stars, 26th Floor Los Angeles, CA 90067 5 Telephone: 310.552.4400 6 LEWIS BRISBOIS BISGAARD & 7 SMITH LLP 8 LAWRENCE R. LAPORTE, CA#130003 Lawrence.LaPorte@lewisbrisbois.com 9 633 West 5th Street, Suite 4000 **10** Los Angeles, California 90071 Telephone: 213.250.1800 11 Facsimile: 213.250.7900 **12** Attorneys for Plaintiffs 13 HYPER ICE, INC. and 14 HYPERICE IP SUBCO, LLC 15 16 **17** 18 19 **20** 21 22 23 24 **25 26** 27 28

DEMAND FOR JURY TRIAL 1 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, 2 8. Plaintiffs HYPER ICE, INC. and HYPERICE IP SUBCO, LLC hereby demand a 3 trial by jury of all issues triable by jury. 4 DATED: January 16, 2024 MILLER BARONDESS LLP 5 6 7 By: /s/ Ben Herbert BEN HERBERT, CA#277356 8 bherbert@millerbarondess.com 2121 Avenue of the Stars, 26th Floor 9 Los Angeles, CA 90067 **10** Telephone: 310.552.4400 11 LEWIS BRISBOIS BISGAARD & **12** SMITH LLP 13 LAWRENCE R. LAPORTE, CA#130003 Lawrence.LaPorte@lewisbrisbois.com 14 633 West 5th Street, Suite 4000 Los Angeles, California 90071 15 Telephone: 213.250.1800 16 Facsimile: 213.250.7900 **17** Attorneys for Plaintiffs 18 HYPER ICE, INC. and HYPERICE IP SUBCO, LLC 19 **20** 21 22 23 24 **25 26** 27 28